



[Billing Code: 4710-06]

**DEPARTMENT OF STATE**

**22 CFR Part 13**

[Public Notice: 8808]

RIN: 1400-AD61

**Personnel; Changes in Statutory Authority; Technical Corrections; Liability for Neglect of Duty or for Malfeasance Generally; Repeal of Regulation**

**ACTION:** Final Rule.

**AGENCY:** Department of State.

**SUMMARY:** The Department of State is repealing the regulation that provides for personal liability for Consular Officers in cases of malfeasance, and provides updates to citations of authorities. The deleted regulation, which was promulgated in 1957 and last amended in 1984, is no longer authorized by statute.

**DATES:** This rule is effective ***[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]***

**FOR FURTHER INFORMATION CONTACT:** Daniel Klimow, Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, 2201 C Street NW, SA-17, Washington, DC, 20520, (202) 485-6224, klimowd1@state.gov.

**SUPPLEMENTARY INFORMATION:** This rule removes 22 CFR 13.3 from the Code of Federal Regulations. 22 CFR 13.3 provides that consular officers who willfully neglect or fail to perform any duty imposed on them by law shall be found liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct. 22 CFR 13.3 also provides for criminal penalties for consular officers found guilty for malfeasance and corrupt conduct in office. The Department is removing 22 CFR 13.3 because the rule's authorizing statute has been repealed.

22 CFR 13.3 implemented [22 U.S.C. 1199](#), which explicitly provided for civil and criminal liability against consular officers for willful neglect or omission in the performance of their assigned duties. Section 1199 was repealed in 1977, and the legislative history for the repeal of Section 1199 reflected a desire by Congress to treat consular officers the same as other federal employees with respect to personal liability for acts taken within the scope of their official duties. [Foreign Relations Authorization Act](#),

[Fiscal Year 1978, Pub. L. 95–105, title I, section 111, 91 Stat. 848 \(1977\)](#); H.R. Rep. No. 95-231, at 17, 21 (1977); H.R. Rep. No. 95-537 at 33 (1977) (Conf. Rep.).

22 CFR 13.3 was also promulgated under the authority of 22 U.S.C. 2658 and [22 U.S.C. 3926](#). However, 22 U.S.C. 2658 was repealed in 1994. 22 U.S.C. 3926 is still in effect and is a general authorization for the Secretary of State to prescribe such regulations as are necessary to administer the foreign service in conformity with federal law; however, it does not grant the Secretary specific authority to provide for the civil and criminal liability of consular officers in 22 CFR 13.3.

Finally, this rule updates all of the statutory authorities cited in Part 13, and updates one regulatory reference (from Section 22.4 to Section 22.6).

## **REGULATORY ANALYSIS AND NOTICES**

### ***Administrative Procedure Act***

This action is being taken as a final rule pursuant to the “good cause” provision of 5 U.S.C. 553(b). It is the position of the Department that notice and comment are not necessary in light of the fact that 22 CFR 13.3 implements a repealed statute; thus, it is no longer authorized. In addition, there were only technical edits to the remaining three sections of Part 13. This rulemaking is effective immediately in accordance with 5 U.S.C. 553(d)(3). Finally, this rulemaking is exempt from the notice and comment pursuant to 5 U.S.C. 553(a)(2), as it is a matter relating to agency management of personnel.

### ***Regulatory Flexibility Act***

The Department hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 605(b).

### ***Unfunded Mandates Reform Act***

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rulemaking will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

### ***Executive Orders 12866 and 13563***

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this rule seeking repeal of 22 CFR 13.3 and updates to Part 13 justify its costs. The Department does not consider this rule to be a significant rule as defined by E.O. 12866. The Department has considered this rule in light of Executive Order 13563, and affirms that this regulation is consistent with the guidance therein.

### ***Federalism***

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

### ***Civil Justice Reform***

The Department has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

### ***Consultations with Tribal Governments***

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

### ***Paperwork Reduction Act***

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### **List of Subjects in 22 CFR Part 13**

Consular services, Crime, Government employees.

Accordingly, 22 CFR Part 13 is amended as follows:

**PART 13—PERSONNEL**

1. The authority citation for Part 13 is revised to read as follows:

AUTHORITY: 22 U.S.C. 2651a; 22 U.S.C 4198-4199, 4209, and 4217-4218.

**§13.1 [Amended]**

2. Section 13.1 is amended by removing “(22 U.S.C. 1189)” and adding “(22 U.S.C. 4209)” in its place, by removing “§22.4” and adding “§22.6” in its place in the Note, and by removing the sectional authority citation.

**§13.2 [Amended]**

3. Section 13.2 is amended by removing “(22 U.S.C. 1198)” and adding “(22 U.S.C. 4217)” in its place, and by removing “(22 U.S.C. 1178 and 1179)” adding “(22 U.S.C. 4198 and 4199)” in its place, and by removing the sectional authority citation.

**§ 13.3 [Removed and Reserved]**

4. Section 13.3 is removed and reserved.

**§13.4 [Amended]**

5. Section 13.4 is amended by removing “(22 U.S.C. 1200)” and adding “(22 U.S.C. 4218)” in its place, and by removing the sectional authority citation.

July 18, 2014  
Date

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Michele T. Bond  
Acting Assistant Secretary  
Bureau of Consular Affairs  
U.S. Department of State

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